

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2075 OF 2003
IN
SUIT NO.4089 OF 1997

Rajan B. Mehta Plaintiff
V/s.
Smt.Prafulla B. Shah Defendant
And
The Municipal Corporation of Gr.Mumbai Respondent

Mr.D.H. Mehta i/b Mr.L.C. Joshi for the Plaintiff.
Mr.K.H. Mody i/b Haridas & Co. for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 24TH NOVEMBER, 2005.

P.C. :

1. The Notice of Motion seeks an order directing the Defendant to make payment of Rs.2,03,355=81 ps. to the Respondent i.e. Municipal Corporation of Greater Bombay in respect of the suit flat in the Defendant's possession and for an order directing the Municipal Corporation of Greater Bombay to issue separate bills in respect of individual flats to the respective occupants thereof.

2. Ad-interim reliefs were refused by S.A. Bobde, J. by an order dated 1st August, 2003. I am in respectful agreement with the reasonings of His

Lordship for refusal of the ad-interim reliefs. I adopt the same reasonings to dismiss the Notice of Motion. In addition thereto, I would add some reason of my own. Even assuming that the Plaintiff has a claim in respect of tax it is one for money/damages. Prima-facie it appears that the Plaintiff is not entitled to insist on the Defendant paying the municipal taxes. This is despite the fact that the Municipal Corporation of Greater Bombay itself have a right to insist upon the payment even from the Defendant. I do not propose adjudicating the rights between the Defendant and the Municipal Corporation of Greater Bombay in this order.

3. The fact of the matter is that for almost 20 years, the Plaintiff has failed and neglected to obtain the occupation certificate in respect of the said flats. Failing to obtain the occupation certificate affects the rights of the flat purchasers adversely in every respect. It affects the title to the property. It enhances the statutory dues/municipal taxes payable in respect thereof. Till the Plaintiff obtains the occupation certificate, it is not open to the Plaintiff to insist on such payments.

4. Mr.Mehta, the learned counsel appearing on behalf of the Plaintiff relied upon a letter dated 30th May, 1992. Under the said letter the Defendant is purported to have been given possession only for the purpose of renovation. Mr.Mehta fairly concedes that in fact possession itself was given. I see no reason why especially for a monetary claim I ought to exercise the discretion in favour of the Plaintiff who have illegally put flat purchasers in occupation of the suit premises without there being any occupation certificate.

5. Hence the Notice of Motion is dismissed. As far as prayer (b) is concerned, the Plaintiff is at liberty to adopt proceedings against the Respondent - Municipal Corporation of Greater Bombay.